

Congressional Record

House of Representatives

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CONFERENCE REPORT ON S. 151, PROSECUTORIAL REMEDIES AND TOOLS AGAINST THE EXPLOITATION OF CHILDREN TODAY ACT OF 2003

Mrs. MYRICK. Mr. Speaker, I yield 5 minutes to the gentleman from Florida (Mr. *Feeney*).

Mr. FEENEY. Mr. Speaker, I thank the gentlewoman for yielding me this time.

I rise in support of the rule. The rule was actually necessitated over a debate about what this bill should include.

Some of the opponents of the rule suggested it should include just the AMBER Alert system, and as they well know, actually the AMBER Alert system has already been instituted by Bush administration. It reminds me of an experience that Adlai Stevenson shared when he was running for President in 1956. At the end of what he thought was a great speech of about 40 or 45 minutes, a woman from the audience came up and said, Mr. Stevenson, I thought your speech was simply superfluous. To which he responded, to test whether she really had a full grasp of the English language, Thank you, Madam; I am thinking of having it published posthumously, to which she replied, Wonderful, the sooner, the better.

Mr. Speaker, I applaud the gentleman from Wisconsin (Chairman **SENSENBRENNER**) in his effort to make sure that what we are doing today is not superfluous. The AMBER Alert system is wonderful at attempting to retrieve children that are kidnapped and

transported over State borders, but it is already in effect. What we have tried to do in the committee under the leadership of the chairman is to deter and punish people and put them behind bars for a long time, who are actually about to kidnap, abuse, or sexually offend against minors. That is what this bill ultimately did, thanks to the leadership of the gentleman from Wisconsin (Chairman **SENSENBRENNER**).

One of the provisions that has been added, I have a particular interest in. It has been referred to as the Feeney amendment. This bill with the amendment in it, as it has been modified in conference, addresses a serious problem of downward departures from the Federal Sentencing Guidelines by judges across the country. Although the guidelines continue to state that departures should be rare occurrences, they have actually proven to have been anything but.

The Department of Justice testified before the Subcommittee on Crime, Terrorism and Homeland Security that the rate of downward departures on grounds other than substantial assistance to the government has climbed steadily every year for many years. In fact, the rate of such departures is up by an overwhelming 50 percent in just the last 5 years alone. And by the way, the rate of departures downwards is 33 times higher than the rate the Federal judges

depart upwards from the sentencing guidelines.

The Department of Justice believes that much of the damage is traceable to the Supreme Court decision in *King v. United States*. Actually, that decision has led to an accelerated rate of downward departures by judges.

What this bill now does is to contain a number of provisions designed to ensure a more faithful adherence to the laws of the United States, as passed by this Congress. Specifically, the amendment, as it was adjusted in conference, would put strict limits on departures for child crimes and sex offenders by allowing sentences outside the guideline only upon grounds that are specifically enumerated by the judge. This is important because it limits the judge's discretion, forces the judge to explain what he has done, and provides an opportunity for the prosecutors to appeal if the judge has been completely unfaithful.

There are a number of other reported provisions that are contained in the Feeney amendment. It calls for the Sentencing Commission to review and revise the departures from guidelines for all other cases that do not involve offenses against children, provides for the Department of Justice to have access to existing judge-identifying database maintained by the Commission, and it does also provide there will be a report to Congress every year by the Department of Justice reflecting the reforms of internal appellate review practices for these downward departures.

Finally, it provides that no more than three of the commissioners to the

Sentencing Guideline Commission can come from the ranks of the Federal judiciary.

This is a great victory today. It is a great victory for children. It is a great victory for those of us who do not want to just retake possession of children that have been kidnapped or abused, but those of us who want to prevent the abuse and the kidnapping to begin with.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself 3 minutes.

I would like to engage my colleague from Florida in a colloquy if he would be so inclined. I ask my colleague his understanding of the modifications that took place in conference, because Members have come to several of us asking us our understanding; and quite frankly, I am not clear and perhaps he can help us to understand whether or not it, in fact, was modified as it pertains to all sex crimes or was it modified to include just sexually exploited situations as it pertains to children.

Mr. FEENEY. Mr. Speaker, will the gentleman yield?

Mr. HASTINGS of Florida. I yield to the gentleman from Florida.

Mr. FEENEY. Mr. Speaker, I am going to say to my good friend in that, in the first place, the primary source rule probably ought to be in effect here. I was not part of the conference committee, and what I have is a review of that.

I do note that the gentleman from Wisconsin (Chairman **SENSENBRENNER**) is on the floor, paying close attention; so at a minimum,

I hope he will correct me for any deficiencies.

As I understand it, with respect to being more restrictive in terms of when Federal judges can depart downward from the guidelines, the original Feeney amendment actually applied to all Federal offenses. With respect to that downward departure restriction that we are doing now, it only applies to offenses against children, sex offenses, kidnapping, abuse, pornography. It does not apply to offenses outside that specific realm.

Mr. HASTINGS of Florida. Mr. Speaker, so the antiquated sexual offenses are not contemplated under the gentleman's amendment as he understands it?

Mr. FEENEY. As I understand what the conference committee report did, it is actually Hatch-Sensenbrenner-Graham, referring to Senator *Bob Graham*, who is a colleague of ours from Florida. I am sorry, **LINDSEY GRAHAM**; it is tough when we have got too many Grahams running around.

In fairness to the gentleman, I should suggest that with respect to providing for de novo reviews of downward departures, that will apply to all Federal offenses, and the gentleman will remember the *King v. United States* case, the Rodney King incident where, for example, the Congressional Black Caucus was very concerned and issued a letter suggesting that we provide this de novo review; so I think we have got the best of both worlds.

Mr. HASTINGS of Florida. Mr. Speaker, I would urge my good friend

from Florida, and he is my good friend, to take into consideration when we decry downward departures that the people that are on the firing line, the Article III judges, make those departures after very careful consideration.

Having served in that branch of government at one point and being an opponent, as almost universally the Federal judges were, of mandatory sentencing and sentencing guidelines, it is not to be taken lightly.

I agree with the gentleman that the appellate review is more than necessary and reporting regarding same should be important. But please do not take the downward departures to mean that the judges did not see something that we do not have an opportunity, when we make these laws, to clearly understand what the judge in fact saw and heard in the sentencing provision, or even in the trial.

I could cite numerous examples where downward departures have saved families and lives. I would hope my friend would understand that.

Mrs. MYRICK. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. *Feeney*).

Mr. FEENEY. Mr. Speaker, I thank the gentlewoman for yielding time to me. I am grateful to the gentlewoman.

In the first place, the honorable gentleman has me at a disadvantage because he has been a member of the other part of our government, and I am respectful of the fact that he has some wisdom and insights that I do not.

I would suggest, however, that what we are doing here is not eliminating the ability of judges to depart from the sentencing guidelines; we are preserving their right and asking them to explain why they did so.

Finally, I would make the point to the gentleman that if the departure ratio was 33 times higher than sentencing guidelines, for every time that there is one below the guidelines, I would suggest to him that we might be hearing from the American Civil Liberties Union, the Criminal Defense Association, and the American Bar Association with a sense of outrage that people with disparate treatment are being abused by having too much sentences imposed on them.

By the way, historically in America there have been suggestions, and I do not have any studies to back it up, that racial and ethnic minorities have been particularly abused along those lines.

I would suggest we have struck a balance here.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself such time as I may consume.

I would make the comment that the hope would be that we do not chill the Federal judiciary with departure restrictions. I think it would be a mistake on our behalf.

Mr. Speaker, I am pleased to yield 3 minutes to my good friend, the gentleman from Texas (Mr. *Lampson*), a gentleman who has been and continues to be a stalwart in the way of providing

for the AMBER Alert, a leader in this regard.

Mr. LAMPSON. Mr. Speaker, I thank the gentleman for yielding me the time.

I want to rise in support of this conference report, and certainly to thank all of the people who have worked on it: the gentleman from Wisconsin (Chairman **SENSENBRENNER**) and the gentleman from Texas (Mr. *Frost*), for bringing the legislation; the gentlewoman from Washington (Ms. *Dunn*) on the AMBER Alert itself; and looking into the overall larger bill, which I became a cosponsor of early on, the work that the gentleman from Florida (Mr. *Foley*) has done on the Congressional Caucus on Missing and Exploited Children, along with me and about 150 other Members of the House of Representatives, as we have worked diligently to try to make a difference in this issue that deals with child protection.

I have spoken for 2 years on this issue and am thrilled to see the kind of interest that this has brought right now and the support it has brought from across our House of Representatives and the Senate.

We all know about the AMBER Alert and what it is and why it is such a good thing. So right now I really do not want to talk so much about it, but to talk about the larger role of who is playing a role in this overall effort: the Members of the House, the Senate, their staffs. The work that has been done in the last several months, I think, is extremely impressive.

Certainly, I would mention the National Center for Missing and

Exploited Children and what they have done since their involvement in this issue for the last more than 20 years. There is the FBI, the Customs Service, and local law enforcement officials, as well as the media who also are a big part of the AMBER Alert.

I want to thank the families and friends of Laura Kate Smither, the little girl who was abducted and murdered in 1997, who actually was the inspiration for the Congressional Caucus on Missing and Exploited Children. I stand here today in honor of Laura and with the hopes that this important piece of legislation will prevent the abduction and exploitation of children across America.

I also rise in support of this conference report, because it helps the Secret Service continue its work on behalf of missing children. Nearly a decade ago, Congress authorized the U.S. Secret Service to participate in a multi-agency task force with the purpose of providing resources, expertise, and other assistance to local law enforcement agencies and the National Center for Missing and Exploited Children in cases involving missing and exploited children.

This began a strong partnership between the Secret Service and the National Center for Missing and Exploited Children and resulted in the Secret Service providing critical forensic support, including polygraph examinations, handwriting examinations, fingerprint research and identification, age progressions and regressions, and audio and video enhancements to the National Center for Missing and Exploited Children and to local law enforcement in numerous missing

children's cases. They have indeed made significant differences.

However, there is a clear need to provide explicit statutory jurisdiction to the Secret Service to continue this forensic and investigative support upon request of local law enforcement or the National Center for Missing and Exploited Children. The Secret Service amendment, which was adopted and is part of the S. 151 conference report, will do just that.

I want to conclude and say, support the conference report. With the help of the Secret Service, these organizations will be able to continue their work.

Mrs. MYRICK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I include for the **RECORD** two letters, one from the National Mentoring Partnership and the other from the National Council of Youth Sports, in support of this bill.

The letters referred to are as follows:

MENTOR/NATIONAL

MENTORING PARTNERSHIP,

Alexandria, VA, April 10, 2003.
Hon. **JIM SENSENBRENNER**,
House Committee on the Judiciary,
Rayburn House Office Building,
Washington, DC.

DEAR CHAIRMAN SENSENBRENNER:
MENTOR/National Mentoring Partnership is pleased to note that the Conference report of the ``Prosecutorial Remedies and Other Tools to End the

Exploitation of Children Today Act of 2003" includes provisions to improve volunteer organizations' access to criminal background checks on prospective volunteers. MENTOR commends the Conferees for including these critical provisions, which are a step towards helping mentoring and other volunteer organizations effectively screen out those individuals who may harm rather than help a child.

Volunteer organizations that serve vulnerable populations--namely children, the elderly, and individuals with disabilities--require access to accurate, timely, and complete criminal background checks. If a background check does not meet these criteria, a human service organization could unwittingly hire or engage as a volunteer a person with a dangerous criminal past--such as child or elder abuse, molestation or rape, or a host of other offenses--to care for their clientele. That puts children and other vulnerable people needlessly at risk.

This is a vital issue for mentoring programs throughout the nation because the current system is simply not functioning. To get a nationwide check under current law, a volunteer organization must apply through their state agency. While a few states are responsive to these requests, in the majority of the states it is exceedingly difficult and often impossible to obtain a nationwide check. Many states have not authorized an agency to handle background check requests, or interpret federal law so narrowly that very few human service organizations are deemed eligible to apply for the checks. When a nationwide check can be performed, it is

often prohibitively expensive and time-consuming.

The Conference report for the PROTECT Act includes a study that will assess the nationwide and state criminal background check system, and make recommendations on how to ensure that human service organizations can promptly and affordably conduct these important checks. The Conference report also establishes a pilot program to test out two possible methods of streamlining access to nationwide criminal record checks. The pilot program will enable mentoring organizations to receive nationwide checks and protect children while a reliable solution to this problem is found.

MENTOR, which serves over 4,000 mentoring programs throughout the country, believes that these provisions are an important step towards reliable, accurate, and timely criminal record checks for volunteer organizations. MENTOR urges Congress to support and promptly enact the criminal background check provisions included in the PROTECT Act Conference report.

Yours truly,

Gail Manza,
Executive Director.

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NATIONAL COUNCIL OF
YOUTH SPORTS,

Stuart, FL, April 8, 2003.

DEAR CONGRESSMAN
SENSENBRENNER: On behalf of the

38,000,000 boys and girls the National Council of Youth Sports (NCYS) membership represents, we extend a sincere thank you for your commanding efforts to press forward on the issue of background checks for volunteers. The NCYS proudly accepts being one of three organizations that will participate in the eighteen-month pilot project, within the Amber Alert bill, whereby 100,000 background checks (33,000 each) will be performed by the FBI.

We are grateful to each and every one of you for taking the first step in this vital child safety initiative. This is just the beginning, there is so much more that needs to be done. As we move forward we will want to work together to better understand some of the concerns. For example, while an \$18 fee for a background check may sound reasonable and be acceptable in more affluent communities, an \$18 fee in the economically disadvantaged areas is unaffordable and will leave our children unprotected from convicted sexual abusers. The underprivileged economic areas are often our most vulnerable programs allowing the predators to prey on the weakest. Therefore, it is not only our desire but also our fundamental responsibility to realize our determined goal for free, easily acceptable background checks regardless of one's economic circumstances.

The NCYS is a very strong and powerful group. A sampling of our membership consists of the national organizations of Little League Baseball, Pop Warner Football/Little Scholars, American Youth Soccer Organizations, Boys & Girls Clubs of America, Amateur Athletic Union, etc. We are prepared to mobilize our grassroots

millions and move our public relations vehicles forward to secure a meaningful, sound and effective piece of child safety legislation for reliable and rapid background checks with one national database that is federally funded so that our innocent children will be protected from abuse and sexual victimization.

In the meantime, we are very anxious to begin the process through this pilot project. We look forward to working closely together as we all engage in a conscientious manner to provide our children the protection they deserve while living in America's neighborhoods that are safe and secure from convicted predators.

Respectfully,

Sally S. Cunningham,
Executive Director.

Mr. Speaker, I yield 4 minutes to the gentlewoman from Washington (Ms. *Dunn*), the author of the AMBER Alert system.

Ms. DUNN. Mr. Speaker, I thank the gentlewoman for yielding time to me.

On behalf of The Ed Smart family, the Polly Klaas Foundation, the National Center for Missing and Exploited Children, and the thousands of families still searching for their missing children, I rise today to express my gratitude to the gentleman from Wisconsin (Chairman **SENSENBRENNER**), to the members of the Committee on the Judiciary, to the House leadership, and to my coauthor of the AMBER Alert, the gentleman from Texas (Mr. *Frost*), for working together, for joining together to

make our work on AMBER Alert a reality.

The AMBER Alert program will contribute hugely to the safety and the well-being of our Nation's children. As a mother of two sons and soon-to-be grandmother, I join with all the parents and the grandparents in appreciating how critical it is to have all communities have the access and the full ability to protect their children from kidnappers who seek to harm our little ones.

To date, AMBER Alert has been credited with the safe recovery of 53 children. We know the AMBER Alert system works by allowing communities to tap into the resources of an educated public, to prepare local law enforcement, and engage the media in reuniting children with their loving families.

The media and an educated public, for example, were absolutely critical in the safe return of Elizabeth Smart to her family a few weeks ago. President Bush showed very strong and early support for our bill last year; and thanks to his good sense, he took the first steps by providing grants to States and localities to help establish local AMBER Alert programs.

It is now time for Congress to codify the AMBER Alert. We need to provide additional funding. We need to provide additional oversight to empower every single State and community with the tools and the resources to react quickly to child abductions and bring these children safely home to the arms of their parents.

I applaud the leadership and the commitment of both the House and

Senate conferees for moving this bill through the legislative process so quickly so that it can arrive on the President's desk before the Easter break. All of us should be proud for enacting a law that will help prevent crimes against our most vulnerable citizens, our children. I urge my colleagues to support this important legislation.

Mr. HASTINGS of Florida. Mr. Speaker, I am very pleased to yield 2 minutes to my good friend, the gentlewoman from Ohio (Mrs. *Jones*), who was formerly a member of the Ohio judiciary.

Mrs. JONES of Ohio. Mr. Speaker, I would like to thank the gentleman for yielding time to me.

It is not often that we have the opportunity to use our prior experience to discuss a piece of legislation. For those who are not aware, I was a judge for 10 years in Cuyahoga County, Ohio, handling cases not only dealing with civil matters but also cases where the death penalty could in fact be imposed.

I am the former district attorney for Cuyahoga County, Ohio, where I prosecuted cases with a staff of 180 lawyers for 8 years, and now I get to the third branch of government, the legislative.

I recognize that often in response to incidents or occurrences we want to jump up and pass legislation that we think will have a deterrent impact. But I say to Members, as one who has not only enforced the law but has been required to impose sentences, that a response of placing another mandatory sentence on the books of these United

States is not the appropriate response. Judges need discretion. Judges need the opportunity to assess the facts, look at the law, and impose the appropriate sentence.

I support AMBER Alert. I wish that in the many cases that I had and I prosecuted for 8 years that we had an AMBER Alert system; and I am confident that many more young people across the country would have in fact been returned to their families had we had the system. I am 100 percent in support. I speak out in favor of it.